United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT : NEW YORK

76-2038

JEAN CLAUDE PINTO,

PETITIONER-APPELLANT,

Docket No. 76-2038

-against-

UNITED STATES OF AMERICA,

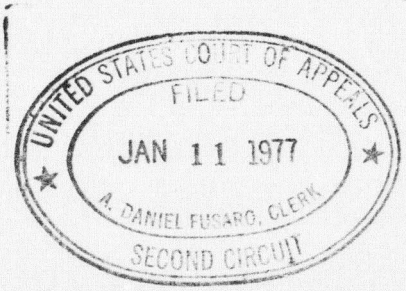
JAN 3 1977

RESPONDENT-APPELLEE.

B
P/S

PETITIONER-APPELLANT'S PRO SE
BRIEF ON APPEAL
+
Appendix

DATED: This 30th day of December, 1976.



Respectfully submitted,

Jean C. Pinto

Jean Claude Pinto
Petitioner-Appellant, pro se
PO Box PMB #75644
Atlanta, Georgia 30315

PAGINATION AS IN ORIGINAL COPY

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CASES CITED

CONSTITUTIONAL AMENDMENTS INVOLVED

MISCELLANEOUS AUTHORITIES

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT : NEW YORK

JEAN CLAUDE PINTO,

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-against-

UNITED STATES OF AMERICA,

RESPONDENT-APPELLEE.

PETITIONER-APPELLANT'S PRO SE
BRIEF ON APPEAL

PRELIMINARY STATEMENT

This is an appeal from orders dated June 25, and December 29, 1975, entered in the United States District Court for the Southern District of New York, Lawrence W. Pierce, U.S. D.J., which denied without a hearing the petitioner's motion pursuant to Title 28, U.S.C., Section 2255, and a subsequent petition for a rehearing thereto. The petitioner sought vacature of a judgment of conviction rendered, after jury trial, on January 10, 1973, at which time the petitioner received two consecutive sentences of fifteen (15) years and ten (10) years for two counts of violating the narcotic laws

STATEMENT OF FACTS

Indictment 72 Cr 628, was filed on May 22, 1972, charged five defendants; Enrique Barrera, Gilbert Bornstejn, Jesus Jorge Enrique, Philip Anthony Deluca, and the petitioner in Count One with conspiracy to import, distribute and possess with intent to distribute 120 kilograms of heroin and in Count Two with possession with intent to distribute approximately one and one-half kilograms of heroin in violation of Sections 812, 841(a)(1) and 841(b)(1)(a) of Title 21, United States Code. Trial Commenced on October 18, 1972, and continued until November 18, 1972, when the jury returned a verdict of guilty as to the five defendants* on each count.

This Court affirmed the conviction on October 9, 1973, United States V. Barrera, 486 F.2d 33[illegible], and certiorari was denied by the United States Supreme Court, 94 S.Ct. 1944.

i. The Section 2255 Motion.

On April 30, 1974, the petitioner submitted a pro se motion under 28 U.S.C., Section 2255, attacking the validity of his conviction inasmuch as the true bill alleges violations of Sections 812, 841(a)(1) and 841(b)(1)(a) as opposed to the indictment upon which the petitioner was tried and convicted

*Barrera and Bornsztejn escaped from West Street on or about October 1974. Enrique is presently on parole and DeLuca was recently released as being mentally incompetent after spending approximately four years at the Springfield Medical Center Facility. The petitioner is thus the only defendant who is still in custody.

which included violations of Sections 952(a), 960(a)(1), 960 (b)(1), 846 and 963, of 21 United States Code.

The petitioner argued in the court below that the record fails to show that the Grand Jury returned an indictment enumerating said latter sections, consequently, the instant conviction is constitutionally infirm.

On August 5, 1974, Walter J. Higgins, Assistant United States Attorney, submitted an affidavit in opposition which stated that he

> "...supervised the preparation of Indictment 72 Cr 628 and its presentation to the May, 1972, Regular Grand Jury in this District. To my knowledge, it never has been the practice of the United States Attorney's Office in this District to use the printed form 'true bill' available on the cover page of an indictment."

This affidavit was in response to the petitioner's allegation that the "true bill" failed to reflect all of the specific sections of the federal narcotic laws for which he was convicted.

On August 19, 1974, the petitioner submitted a traverse to the Higgins affidavit in which he requested that the District Court order the "true bill" unsealed and inspect it. (The fact that the "true bill" was sealed was revealed in the Higgins affidavit, p.3). And on December 11, 1974, the lower court granted the petitioner's motion and ordered that the "true bill" be transmitted to the court for its inspection, in camera.

On December 24, 1974, the petitioner submitted a petition for a writ of habeas corpus ad testificandum requesting to be produced before the lower court so that he might adequately present challenges to the validity of the indictment, and to be present when the trial court inspected the "true bill".

On December 31, 1974, the lower court, after inspecting the "true bill", entered an order to the effect that:

> "Based on inspection of the aforementioned 'True Bill' the Court has determined that petitioner's contentions as to its contents are indeed correct.
>
> "It is therefore ordered that the Government shall submit additional answering papers to petitioner's motion addressing the legal issues raised therein and showing cause why that motion should not be granted....."

On January 31, 1975, the lower court denied the petitioner's writ of habeas corpus ad testificandum of December 24, 1974, because since it agreed with the petitioner's original motion it found "no factual issue before the Court at this time."

In response to the lower court's order of December 31, 1974, the Government submitted a memorandum of law citing Rule 6(c)(f) of the Federal Rules of Criminal Procedure as sufficient reasons for denying the petitioner's motion. And on January 27, 1975, the petitioner responded thereto with a memorandum of law. The petitioner also submitted on June 9, 1975 an application for bail pending the lower court's ruling.

On June 25, 1975, the district court denied relief and filed an opinion which held in part as follows:

> "Petitioner Jean Claude Pinto has filed a motion pursuant to 28 U.S.C. §2255 seeking to vacate the judgment of conviction and sentence imposed in case number 72 Cr 628 in this Court on the grounds that he was convicted and sentenced for offenses not voted by the grand jury. Specifically, petitioner charges that the 'true bill' or 'grand jury bill' returned by the grand jury enumerated violations of Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(a), but did not include violations of Title 21, United States Code, Sections 952(a), 960(a)(1), 960(b)(1), 846 and 963.
>
> "The Court determined, by in camera inspection of the documents filed by the grand jury, that indeed, the document which records the number of grand jurors concurring in the voting of the indictment did not list the latter group of offenses. However, contrary to the petitioner's assertions, this fact does not invalidate the indictment, the conviction, or the sentence.
>
> "The indictment, prepared by the Assistant United States Attorney, and signed by the foreman of the grand jury, set forth fully each of the offenses for which the petitioner was convicted and sentenced. In all cases brought in the Southern District of New York, the indictment is always present in the jury room when the grand jury votes. See United States V. Niedelman, 356 F.Supp. 979, 983 (S.D.N.Y. 1973). Under these circumstances, the Court finds no basis for holding that, in addition, the grand jury bill which records the number of grand jurors voting for the indictment must also list each of the offenses charged in order for the indictment to be valid.
>
> "The petitioner's motion is hereby denied."

On July 14, 1975, a petition for rehearing was submitted in which the petitioner alleged that a few hours prior to trial the AUSA, Higgins, handed petitioner's counsel an indictment consisting of two counts and that this latter indictment, besides placing the petitioner in double jeopardy, was substituted for the original indictment which was not under lock and key as was the true bill. The petitioner submitted the above as the answer to the variance of charges set out in the indictment and which were not part of the true bill. A subsequent motion to amend the petition for a rehearing to include other records for purpose of appeal and suggestion for certified questions pursuant to the judicial code was submitted on September 22, 1975.

On December 29, 1975, the lower court, after receiving an opposing affidavit from the Government, denied the petition for rehearing. (See Appendix). And on February 12, 1976, Notice Of Appeal was duly filed along with filing fee thereto. The $50.00 docketing fee was sent to this Court on March 29, 1976. This appeal is from both adverse orders entered by the lower court, i.e., the order of June 25, 1975, and December 29, 1975.

ii. Intermediate Proceedings.

On June 8, 1976, the petitioner submitted to this Court a Motion To Convene The Court En Banc wherein he sought

remand to the district court with instructions to dismiss the indictment. This latter motion reiterated much that has already been setforth hereinabove with the exception that the double jeopardy issue was more fully developed. On August 26, 1976, this Court denied the motion for en banc hearing.

On September 30, 1976, the petitioner was given a docket number, 76-2038, and notified that briefs on appeal were to be submitted no later than November 30, 1976, with appendices thereto.

On October 5, 1976, the petitioner was granted permission to proceed upon typewritten briefs. And upon his timely application a thirty (30) day extension of time was granted by this Court, briefs and appendices to be submitted no later than December 30, 1976. Therefore, this appeal is now properly before this Court.

ARGUMENT

POINT I

THE TRUE BILL DOES NOT REFLECT THAT THE GRAND JURY INDICTED THE PETITIONER FOR SOME OF THE ENUMERATED OFFENSES CONTAINED IN THE BODY OF THE INDICTMENT AND TO WHICH THE PETITIONER WAS TRIED AND CONVICTED

The Fifth Amendment to the National Constitution speaks in unequivocal terms that

> "(n)o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,..."

Hence it is the grand jury, and the grand jury alone, that is vested with the awesome power to return an indictment against one accused of crimes. And it is clear that once the grand jury does return an indictment that the accused must be tried only upon those charges which appear in the indictment via the true bill. Any amendment, e.g., alteration and/or addition thereto must be made by the grand jury--not the prosecutor.

In the case at bar the petitioner was indicted for violations of Section 812, 841(a)(1) and 841(b)(1)(a) of Title 21, U.S.C., by the grand jury; however, he was tried for the additional violations of Sections 952(a), 960(a)(1), 960(b)(1), 846 and 963, of Title 21, United States Code. This was done without resubmitting the indictment to the grand jury.

Admittedly, this issue was not briefed nor argued on the petitioner's direct appeal, and when the petitioner first raised it on collateral attack the lower court deemed it a sufficiently valid claim upon which to rest its order, to the Government, to show cause why the petitioner's motion should not be granted. (See p. 4, supra, Order dated December 13, 1974). And, notwithstanding, it then proceeded to deny relief in a subsequent order/opinion. (See p. 5, supra, Order dated June 25, 1975). This latter denial is in conflict with the lower court's findings that the "true bill" supports the petitioner's contentions that he was not indicted for the charges upon which the grand jury returned the indictment.

It is respectfully submitted to this Honorable Court that the lower court's denial is inconsistent with due process of law and inapposite to the Supreme Court's stated position in this area.

In Ex Parte Bain (121 U.S. 1, 9, 7 S.Ct. 781, 786, 30 L.Ed. 849 (1887)) the United States Supreme Court held that:

> "The party can only be tried upon the indictment as found by such grand jury, and especially upon all its language found in the charging part of that instrument."

In Bain the Supreme Court rested its reasoning primarily on the mandate of the Fifth Amendment and its constitutional principles. Consequently, it excluded any notion

of a nonprejudicial amendment to the indictment and as a result the doctrine of harmless error has not been applied to indictments that are amended outside the presence of the grand jury. Indeed, it appears that the harmless error concept generated as it was solely by present notions of justice, but in reality is the cloak for administrative expediency and/or local policy, demands that the defendant must show prejudice before dismissal of the indictment. This, it is respectfully submitted, is an untenable as well as an unwholesome approach to the Bain rationale and to the usurpation of the grand jury's role in maintaining a semblance of justice by the people as opposed to an overzealous prosecutor. Local policy cannot be allowed to supplant the function of the grand jury to "return into court only those accusations which they have approved,..." (Frisbie V. United States, 157 U.S. 160, 15 S.Ct. 586, 39 L.Ed. 657 (1895)).

That the vitality of Bain continues to flow begs of no doubt; this is cogently reflected in the following cases:

In United States V. Stirone (361 U.S. 212,217, 80 S. Ct. 270, 273, 4 L.Ed.2d 252 (1960)) the Supreme Court held that:

> "The Bain case, which has never been disapproved, stands for the rule that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him."

In Russell V. United States (369 U.S. 749, 771, 82 S.Ct. 1038, 1050, 8 L.Ed.2d 240 (1962)) the Supreme Court reiterated that:

> "To allow the prosecutor, or the court to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him." (Emphasis added)

The overspill of this sound consitutional safeguard is readily gleaned from a perusal of the Fifth and D.C. Circuit Court of Appeals position in the matter. Thus, in United States V. Cox (342 F.2d 167, 170, cert. den. sub nom Cox V. Hauberg, 381 U.S. 935, 85 S.Ct. 1767, 14 L.Ed.2d 700 (1965)) the Fifth Circuit recognized that the grand jury is intersposed "to afford a safeguard against oppressive actions of the prosecutor or a court."

Similarly, we find that in Gaither V. United States (413 F.2d 1061, 1071-1072 (1969)) the D.C. Circuit Court of Appeals underscored this salutary principle as follows:

> "We conclude then that Rule 6 requires the grand jury as a body to pass on the actual terms of an indictment. We are impelled to this conclusion largely by the constitutional principles of Bain, Stirone and Russell, which emphasize the right of the accused to be tried on an indictment which has in each material particular been approved by a grand jury.

> "An amendment of the indictment occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them.
>
> "An amendment is thought to be bad because it deprives the defendant of his right to be tried upon the charge in the indictment as found by the grand jury and hence subjected to its popular scrutiny."

In this light it should be judicially noted that the lower court did agree with the petitioner that the true bill did not contain the additional crimes that are within the body of the indictment; and that the petitioner's later claim, on rehearing, that the prosecutor substituted a differnt indictment has not been successfully refuted. It should also be noted that the petitioner sought a copy of the information that the prosecutor is required to submit along with the original and two copies of the indictment as required by Rule 3(b) of The Rules--Southern District, only to be informed by Rosemarie Fugnetti, Deputy Clerk, for the Southern District of New York, that "(t)here was no information filed." The clerk's letter was mailed on November 10, 1976, in response to the petitioner's letter of inquiry dated Octob[illegible], 1976.

The petitioner respectfully submits to this Court that the prosecutor's failure to file the information required by Rule 3(b) has prejudiced his ability to conclusively show to this Court that the indictment was indeed substituted.

Rule 3(b) of The Rules--Southern District requires that:

> "When an indictment or information is filed, the United States Attorney shall simultaneously file the original and two copies of the indictment or information. He shall also supply an information and designation form, in triplicate, indicating: (1) the category of crime charged and the number of counts; (2) the maximum penalty for each count;....." (Emphasis added)

CONCLUSION

For the aforegoing reasons the orders appealed from should be reversed and the petitioner ordered back for a hearing into the facts herein contained and for such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Jean C. Pinto

Jean Claude Pinto
Petitioner-Appellant, pro se
PO Box PMB #75644
Atlanta, Georgia 30315

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF GEORGIA)
) SS:
COUNTY OF FULTON)

JEAN CLAUDE PINTO, after being duly by law sworn, deposes and says: that on this 30th day of December, 1976, he served a copy of the Briefs on Appeal upon the United States Attorney for the Southern District of New York, together with a copy of the appendice, by placing same in the hands of the Parole Officer Named below for purposes of mailing them via the United States Mail to said United States Attorney, all of which should constitute sufficient proof of service.

Yours etc.,

Jean C. Pinto

Jean Claude Pinto #75644
Petitioner-Appellant, pro se

Sworn to before me this
30th day of December, 1976.

Parole Officer: Authorized by the Act of July 7, 1955 to Administer Oaths (18 U.S.C. 4004).

APPENDIX

PRO SE OFFICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE, FOLEY Sq.
NEW YORK, N.Y. 10007

DATE 1-7-76

Jean Claude Pinto
#75644-148-Box.1000
Leavenworth, Kansas 66048

TITLE : Pinto vs. U.S.A.

DOCKET NUMBER 74 Civ.2239

DECISION DATE December 30,1975

JUDGE : Pierce

THERE IS ENCLOSED HEREWITH A COPY OF A DECISION FILED AND ENTERED IN THE ABOVE ENTITLED PROCEEDING.

YOURS TRULY
RAYMOND F. BURGHARDT
By Edsel F. Boyen
DEPUTY PRO SE CLERK

c.c.

Bancroft Littlefield, Jr., Esq.
Asst. U.S. Atty.

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Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JEAN CLAUDE PINTO, :

Petitioner, :

- v - : 74 Civ. 2239

UNITED STATES OF AMERICA, :

Respondent. :

----------x

APPEARANCES:

JEAN CLAUDE PINTO
#75644 - 148 - Box 1000
Leavenworth, Kansas 66048

#43640

Petitioner, Pro Se

THOMAS CAHILL, ESQ.
United States Attorney, S.D.N.Y.
By: BANCROFT LITTLEFIELD, JR., ESQ.
Assistant U.S. Attorney
One St. Andrew's Plaza
New York, New York 10007

Attorney for Respondent

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

By an Endorsement Order, dated June 25, 1975, this Court denied petitioner Jean Claude Pinto's motion to vacate the judgment of conviction and the sentence imposed on him in this Court (72 Cr. 628). The motion was based on a claim

that petitioner had been tried, convicted, and sentenced for crimes which had never been presented to the Grand Jury. The Court determined that where the indictment signed by the Foreman of the Grand Jury set forth fully each of the offenses for which the petitioner was convicted and sentenced, there was no basis for holding the conviction invalid simply because the grand jury bill, which set forth the number of grand jurors voting for the indictment, did not also list each of the offenses charged in the indictment.

Pinto has filed a petition for a rehearing containing new factual charges, along with a renewed request for an evidentiary hearing on the motion with the petitioner present. In addition, in a submission filed with the Court on November 3, 1975, petitioner raises what appears to be a new ground for the relief originally sought. These separate grounds for relief will be considered in turn.

Pinto's petition for a rehearing is based entirely on a charge that the two count indictment which appears in the Court files of the case, and which sets forth all of the offenses for which Pinto was convicted and sentenced, was not in fact presented to the Grand Jury. Pinto charges that this indictment was substituted by the Assistant United States Attorney, just prior to trial, for an original one count

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indictment which had been presented to the Grand Jury and which had charged only violations of those statutes set forth on the grand jury bill, to wit, 21 U.S.C. §§812, 841(a)(1) and 841(b)(1)(A). Accordingly, based on this new charge, Pinto renews his claim that he was tried for offenses not presented to the Grand Jury, in violation of the Fifth Amendment to the United States Constitution.

The respondent has submitted an affidavit by Walter J. Higgins, Jr., the Assistant United States Attorney in charge of the prosecution in question, which denies that a new indictment was substituted. Reference to this affidavit is unnecessary, however, to dispose of this petition since the files and records of the case, apart from the answering affidavit, conclusively show that the petitioner is entitled to no relief.

An examination of the docket sheet in 72 Cr. 628 shows that the indictment was filed May 22, 1972. No docket entry reflects the filing of a superseding indictment.

Examination of Indictment 72 Cr. 628 shows that it was stamped "Filed May 22, 1972," on the first page and on the back of the cover page. Further, the first stamped page sets out the very statutes, i.e., Title 21, U.S.C. §§952(a), 960(a)(1), and 960(b)(1), which Pinto claims were

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only included in the second indictment, allegedly substituted by the Assistant United States Attorney on the first day of trial, months later. It is apparent from these Court records that the statutes which Pinto claims were never presented to the Grand Jury were indeed included in the original indictment which was filed May 22, 1972 and which was signed by the Grand Jury Foreman.

Pinto argues urgently that the Court may not dispose of the instant motion without holding an evidentiary hearing at which he is entitled to be present and offer evidence. However, 28 U.S.C. §2255 specifically excepts from the requirement of a hearing those motions where the files and records of the case conclusively show that the prisoner is entitled to no relief. In United States v. Hayman, 342 U.S. 205 (1952), relied on by petitioner, the Court specifically found that the issues raised by the prisoner in that case were not determined by the files and records in the trial court. Id. at 219. It is also worth noting that in Hayman, the trial court had found that while the petitioner's trial counsel had indeed also represented a principal witness against the petitioner, he had done so with the knowledge and consent and at the instance of the petitioner. Id. at 209. The Court found that it was improper to make such a finding at

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an evidentiary hearing without having the petitioner himself present. Disposition of the present application requires no such finding resting on facts peculiarly within the knowledge of the petitioner.

It has been held that:

> "Where the allegations [in a §2255 motion] are patently unbelievable from a study of the motions, files and records in the case, the Court in the exercise of a sound judicial discretion should deny relief, otherwise the Court would be required on bare allegations to transfer prisoners at their whim." United States v. Newman, 126 F.Supp. 94, 97 (D.D.C. 1954).

See also, Raines v. United States, 423 F.2d 526 (4th Cir. 1970). In this Court's view, the instant petition for rehearing, based on the allegations set forth supra, calls for application of exactly this rule. The new factual allegations provide no basis, either for a hearing or for the final relief sought.

Petitioner's November 3, 1975 submission raises as a new basis for relief the claim that the judgment and sentence imposed on the first count of the indictment were in violation of the Fifth Amendment in that the first count did not set forth a distinct and separate offense from that set forth in the second count of the indictment. The Court has considered the decisions submitted by petitioner in support of

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this double jeopardy claim and finds them inapplicable. In this case, it is clear that the first count of the indictment charged a conspiracy while the second count charged a substantive offense. There can be no doubt that each of the two counts required for conviction, proof of additional facts not required for conviction under the other count. Accordingly, conviction under both counts did not constitute double jeopardy as contended by petitioner.

The Court having carefully considered all of the materials submitted by the petitioner, the motion for rehearing and related relief is hereby denied in all respects.

SO ORDERED.

Dated: New York, New York
December 29, 1975

LAWRENCE W. PIERCE
U. S. D. J.

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

2/18/76 - JUDGE PIERCE

Jury demand date:

74 CH. 2239

PRO SE

C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
JEAN CLAUDE PINTO VS UNITED STATES OF AMERICA	For plaintiff: JEAN CLAUDE PINTO P.O. BOX 1000 LEAVEN WORTH KANSAS 66048 For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed x	Clerk		5/22/74 5/24/74	J. Pinto U.S. 5200	15 —	15 —
J.S. 6 mailed	Marshal					
Basis of Action: motion to vacate sentence 28 USC sec 2255 72cr628	Docket fee					
	Witness fees					
Action arose at:	Depositions					

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DATE	PROCEEDINGS	Date Order or Judgment Not
3 74	Filed motion to vacate sentence.	
26-74	Filed Pet'n traverse to respondent's answer =	
16-74	Filed Endorsement-Petitioner's motion for an inspection of sealed records is hereby granted to the extent that the clerk of the Court is directed to transmit the aforementioned "true bill" to the undersigned for examination by the Court in camera. Petitioner's motion for inspection is denied to the extent that it seeks an evidentiary hearing & or an order providing that petitioner be present at the opening of the sealed records. So Ordered--Pierce, J. Notice Mailed By Pro Se Clerk.	
2-74	Filed Endorsement-The Government shall shall submit addt'l answering papers to petitioner's motion addressing the legal issues raised herein & showing cause why the motion should not be granted. Such papers shall be submitted within 20 days of the entry of this order-So Ordered-Pierce, J. Mailed notice.	
14-75	Filed petition for writ of habeas corpus ad testificandum	
16-75	Filed deft's memorandum of law.	
4-75	Filed Memorandum for the petitipner.	
6-75	Filed memo endorsed on pet'n filed 1-14-75--Pet'n denied--So Ordered-Pierce,J. Notice mailed by Pro Se Klerk.	
16-75	Filed Petitioners Application fro release on bail pending opinion to be rendered by this Court.	
1 1-75	Filed Memo Endorsed on motion filed 6-16-75. Motion denied, Pierce, J.	
1 1-75	Filed memo endorsed on motion filed 5-23-75. Motion denied. Pierce, J.	
1 23-75	Filed Petitioners Petition for a rehearing of his motion to vacate judgment, etc as indicated.	
25-75	Filed Affidavit of Walter J. Higgins, Jr. Azsst US. A.	
25-75	Filed defts memorandum in opposition to petition for rehearing.	
3-75	Filed Petitioners motion to amend petition for a rehearing etc, as indicated.	
12-75	Filed Petitioners motion for a rehearing and reinstatement, etc, as indicated.	
30-75	Filed Opinion # 43640: Eg Court having carefully considered all of the materials submitted by the petitioner, the motion for rehearing and related relief is hereby denied in all respects So ordered Pierce.	
5-76	Filed Petitioners Motion directing the filing of a Notice of Appeal as indicated.	
5-76	Filed memo endorsed on motion filed 4-5-76. The motion is hereby granted, and the petitioner is given leave to submit the $5.00 fileing fee at a subsequent time, Pierce, J. M/N.	
18-76	Filed petitioner's notice of appeal from order of January 7-76 dismissing his motion to vacate sentence. Note: entry made Apr. 16-76-see entry of 4-5-76. n/m by Pro Se Clerk.	
5-74	Filed Respondent's Affidavit in Opposition to petitioner's motion to vacate sentence.	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk